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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
10 **AT SEATTLE**

11 THE UNITED STATES OF AMERICA, )  
12 THE STATE OF WASHINGTON, THE )  
13 MUCKLESHOOT INDIAN TRIBE, and )  
14 THE PUYALLUP TRIBE OF INDIANS, )

15 Plaintiffs, )

16 v. )

17 POLAR TANKERS, INC. )

18 Defendant. )  
19 \_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

**COMPLAINT**

20 The United States of America, by authority of the Attorney General of the United States  
21 and acting at the request of the Department of Commerce, National Oceanic and Atmospheric  
22 Administration (“NOAA”) and the Department of the Interior, U.S. Fish & Wildlife Service  
23 (“USFWS”); the State of Washington, on behalf of the Washington State Department of Fish and  
24 Wildlife and the Department of Ecology; the Muckleshoot Indian Tribe; and the Puyallup Tribe  
25 of Indians, file this complaint and allege as follows:

26 COMPLAINT

27 Environmental Enforcement Section  
28 U.S. Department of Justice  
7600 Sand Point Way NE, c/o NOAA  
Seattle, Washington 98115  
(206) 526-6608

**NATURE OF THE ACTION**

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3 1. This is a civil action brought against Polar Tankers, Inc. (“Defendant”) pursuant  
4 to the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 *et seq.*, seeking natural resource  
5 damages arising from a discharge of crude oil from Defendant’s tank vessel POLAR TEXAS  
6 into or upon navigable waters of the United States and/or adjoining shorelines.

**JURISDICTION, VENUE AND AUTHORITY**

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8 2. This Court has jurisdiction over the Plaintiffs’ claims pursuant to 28 U.S.C.  
9 §§ 1331, 1345, and 1367, and Section 1017(b) of OPA, 33 U.S.C. § 2717(b).

10 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.  
11 §§ 1391 and 1395(a) and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), because it is the judicial  
12 district in which the oil discharge and resulting injuries occurred.

13 4. Authority to bring this action on behalf of the United States is vested in the  
14 Department of Justice pursuant to 28 U.S.C. §§ 516 and 519.

**DEFENDANT**

15 5. Defendant Polar Tankers, Inc. (“Defendant”) is a wholly owned subsidiary of  
16 ConocoPhillips, Inc.

17 6. Defendant is a “person” within the meaning of Section 1001(27) of OPA, 33  
18 U.S.C. § 2107(27).

19 7. Defendant owns the tank vessel POLAR TEXAS from which the oil discharged.  
20

**STATUTORY BACKGROUND**

21 8. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides that “each  
22 responsible party for a vessel or facility from which oil is discharged, or which poses the  
23 substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines .  
24 . . is liable for the removal costs and damages . . . that result from such incident.”  
25

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9. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), defines “responsible party” to include, “[i]n the case of a vessel, any person owning [or] operating . . . the vessel.”

10. The term “discharge” includes any “. . . spilling, leaking, pumping, pouring, emitting, emptying, or dumping . . .” pursuant to Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

11. “Damages” for which a responsible party is liable, pursuant to Section 1002(a) of OPA, 33 U.S.C. § 2702(a), include, “[d]amages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage . . . .” 33 U.S.C. §§ 2701(5) and 2702(b)(2).

12. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, NOAA, USFWS, the State of Washington, the Muckelshoot Indian Tribe, and the Puyallup Tribe of Indians have been designated trustees for the injured natural resources.

## GENERAL ALLEGATIONS

13. Defendant's oil tanker, POLAR TEXAS, is a "vessel" and a "tank vessel" within the meaning of Section 1001(37) and (34) of OPA, 33 U.S.C. § 2701(37) and (34).

14. On or about October 13, 2004, Defendant's POLAR TEXAS vessel discharged crude oil into waterways in or near Dalco Passage, part of Puget Sound near Tacoma, Washington. Estimates of the volume of oil discharged range from 1,000 to 7,200 gallons.

15. The crude oil is an “oil” within the meaning of Section 1001(23) of OPA, 33 U.S.C. § 2701(23).

16. The waterways in or near Dalco Passage are “navigable waters” within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

17. The discharged oil washed ashore on Vashon and Maury Islands in Washington.

18. The discharged oil caused injuries to natural resources, including various intertidal and subtidal species, including Puget Sound Chinook salmon and other salmonids,

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1 Hardshell Clams, Surf Smelt, and Sand Lance, and their habitats, as well as birds and other  
 2 wildlife. The Spill resulted in oiling and temporary closures of beaches on both Vashon and  
 3 Maury Islands.

4 19. Damages to natural resources caused by the discharge of oil, including the costs  
 5 of assessment of natural resource damages and future restoration, total approximately \$588,000.

6 20. The discharge of oil was not authorized by OPA, or any other federal, state,  
 7 or local government law, regulation, or ordinance.

#### 8 **CLAIM FOR RELIEF**

##### 9 **Natural Resource Damages under Section 1002(a) of OPA**

10 21. The allegations of the foregoing paragraphs are incorporated herein by reference.

11 22. "Natural resources," as that term is defined in Section 1001(20) of OPA, 33  
 12 U.S.C. § 2701(20), have been injured, destroyed or lost as the result of the discharge of oil into  
 13 or upon navigable waters or adjoining shorelines, within the meaning of Section 1002(b)(2) of  
 14 OPA, 33 U.S.C. § 2702(b)(2).

15 23. As a responsible party for a vessel from which oil was discharged into or upon  
 16 navigable waters or adjoining shorelines, Defendant is liable, pursuant to Section 1002(a) of  
 17 OPA, 33 U.S.C. § 2702(a), for damages caused thereby, including but not limited to damages for  
 18 injury to, destruction of, loss of or loss of use of natural resources (and as defined in Section  
 19 1006(d)(1) of OPA, 33 U.S.C. § 2706(d)(1)).

#### 20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, the United States of America; the State of Washington; the  
 22 Muckleshoot Indian Tribe; and the Puyallup Tribe of Indians, respectfully request that the Court:

- 23 1. Award damages for injury to natural resources and costs of assessment;
- 24 2. Award the Plaintiffs their costs of this action; and

25  
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3. Award such other and further relief as the Court deems appropriate.

Date: March 15, 2010

Respectfully submitted,

FOR THE UNITED STATES:

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Environmental Enforcement Section  
Environment and Natural Resources Division  
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/s Erika M. Zimmerman  
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